THE HONOURABLE SRI JUSTICE NOOTY RAMAMOHANA RAO

W.P.No.29612 of 1997
Date: 20-04-2007

Between:
S.Dhanunjaya

Petitioner

And

The Chairman-cum-Managing Director,
B.D.L., Kanchanbagh, Hyderabad, A.P.

Respondent

THE HONOURABLE SRI JUSTICE NOOTY RAMAMOHANA RAO

W.P.No.29612 of 1997

ORDER:

1. The writ petitioner, who has been engaged as a casual Plumber for a short period by the State owned Bharat Dynamics Limited (in short ' B.D.L.'), has instituted this writ petition seeking a declaration that the action of the respondent in preventing him from rendering services with effect from 22-10-1997 as unjust and illegal and consequently he solicited directions to the respondent-B.D.L. to continue him in service.

2. I have heard Sri Krishna Murthy, the learned counsel for the writ petitioner and Ms. Uma Devi, the learned standing counsel for the B.D.L.

3. B.D.L. a Government of India Undertaking functions under the control of the Ministry of Defence. In it's establishment at Hyderabad, it undertakes several sensitive missions and projects relating to the Ministry of Defence and consequently, it's premises is required to have fire fighting equipment installed, maintained and kept in readiness for meeting any eventuality. As part of this job requirement, certain Plumbers are recruited by it and at the same time, it also keeps awarding the annual maintenance contract to various firms who keep on supplying the necessary manpower. The writ petitioner had been in employment crisscrossing with B. D. L. on one hand and various contractors on the other. Sri Krishna Murthy, the learned counsel for the writ petitioner had made strenuous efforts to demonstrate that it is the B.D.L. which keeps tossing the petitioner in view of his efficiency, from one contractor to the other and therefore, it is improper

for the writ petitioner to be characterized as an employee of the contractor of the B. D. L. and instead he should be deemed or treated to be the employee of the B. D. L. directly.

4. Per contra, Ms.Uma Devi, the learned standing counsel for the respondent, contends that the writ petitioner had in fact worked for a couple of years as an Apprentice with the respondent-B.D.L. and because of his familiarity with the work and perhaps also going by the degree of skill acquired by him, he had been engaged on casual basis for a short period between 01-07-1996 and 31-01-1997 but not beyond thereafter. Therefore, Ms.Uma Devi would contend that the Provident Fund deductions that have been effected by the B.D.L. are only for the period, the writ petitioner was in employment with them and not beyond thereafter. The various material papers filed by the writ petitioner would indicate, as if, the writ petitioner had been employed as a Plumber with one contracting agency or the other of the B.D.L. and in that view of the matter he had been issued the necessary security pass to enable him to enter the premises of B.D.L. Though it will not be permissible for a writ court to gather evidence for the purpose of rendering a finding of fact as to whether the writ petitioner had worked with the B.D.L. directly, but nonetheless the admitted position being that the writ petitioner had worked at one time in a causal capacity with the B.D.L. cannot be either ignored or forgotten. It is not that there was urgent need of qualified manpower only for a short period. There is nothing on record to suggest that the writ petitioner is either not qualified or did not acquire the necessary degree of skill to operate the fire fighting equipment installed on the premises of the B.D.L.and that the B.D.L. had recruited candidates for the said purpose.

5. On the contrary, it was brought on record showing that some officials of the B.D.L. have themselves recognized the degree of skill and efficiency of the writ

petitioner in operating the Hydrant machines, which forms part of the fire fighting equipment of the B.D.L. Though the writ court has it's own constrains to record a finding of fact, which would have a bearing on the aspect relating to the "retrenchment", as specific to the provisions contained in the Industrial Disputes Act but nonetheless there is force in the statement made by Sri Krishna Murthy that the nature of work being perennial and requires competent manpower to handle these machinery during emergencies, it is wholly appropriate that if and when the B.D.L. undertakes to make recruitment either on casual, temporary or regular basis and seeks to fill-up the posts of Plumbers, to handle the fire fighting equipment of the B.D.L., preference should be given to the writ petitioner keeping in view the long standing work experience gained by him while operating the equipment of the B.D.L. in his capacity as an Apprentice, as a casual workman or as an employee of the annually maintenance contractor of the B.D.L. This contention is based upon the philosophy enshrined under Section 25-H of the Industrial Disputes Act.

6. Section 25-H of the Industrial Disputes Act reads as under:

> *"25-H. **Re-employment of retrenched workmen**- Where any workmen are retrenched, and the employer proposes to take in to his employ any persons, he shall, in such manner as may be prescribed, give an opportunity to the retrenched workmen who are citizens of India to offer themselves for re-employment, and such retrenched workmen who offer themselves for re-employment shall have preference over other persons."*

Considering the above provision, the Supreme Court had pointed out the import of Section 25 H in the following words in **Central Bank of India Vs. S.Satyam and others**[1]**:**

> *" 8.The plain language of Section 25-H speaks only of re-employment*

of 'retrenched workmen'. The ordinary meaning of the expression 'retrenched workmen' must relate to the wide meaning of 'retrenchment' given in Section 2 (oo). Section 25-F also uses the word 'retrenchment' but qualifies it by use of the further words 'workman….who has been in continuous service for not less than one year'. Thus, Section 25-F does not restrict the meaning of retrenchment but qualifies the category of retrenched workmen covered therein by use of the further words 'workman……who has been in continuous service for not less than one year.' It is clear that Section 25-F applies to the retrenchment of a workman who has been in continuous service for not less than one year and not to any workman who has been in continuous service for less than one year; and it does not restrict or curtail the meaning of retrenchment merely because the provision therein is made only for the retrenchment of a workman who has been in continuous service for not less than one year. Chapter V-A deals with all retrenchment while Section 25-F is confined only to the mode of retrenchment of workmen in continuous service for not less than one year. Section 25-G prescribes the principle for retrenchment and applies ordinarily the principle of 'last come first go' which is not confined only to workmen who have been in continuous service for not less than one year, of ordered by Section 25-F.

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Chapter V-A providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25-F applies but for all cases of retrenchment and, therefore, there is no reason to restrict application of Section 25-H therein only to one category of retrenched workmen. We are, therefore, unable to accept the contention of Shri Pai that a restricted meaning should be given to the word 'retrenchment' in Section 25-H. This contention is, therefore, rejected."

7. The principle enunciated under Section 25-H that who had past

experience and who had been kept out of employment should be provided a fair opportunity of being getting reengaged with the same employer as it will be to the advantage of both the employer and the employee concerned. Therefore, based upon the principle set out supra, I consider the request of alternative prayer made by Sri Krishna Murthy, the learned counsel for the writ petitioner, as worthy of consideration. I therefore, direct the B.D.L. to consider the candidature of the writ petitioner for reengagement as and when the B.D.L. undertakes to fill-up the post of Plumber either on casual, temporary or regular basis.

8. With this, the writ petition stands disposed of. No order as to costs.

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NOOTY RAMAMOHANA RAO,J

20-04-2007
Stp

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[1] AIR 1996 SC 2526 = (1996) 5 SCC 519